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DEPARTMENT OF JUSTICE

Antitrust Division

***United States v. Liberty Latin America Ltd., et al.*; Proposed Final Judgment and Competitive Impact Statement**

Notice is hereby given pursuant to the Antitrust Procedures and Penalties Act, 15 U.S.C. 16(b)-(h), that a proposed Final Judgment, Stipulation, and Competitive Impact Statement have been filed with the United States District Court for the District of Columbia in *United States of America v. Liberty Latin America Ltd., et al.*, Civil Action No. 1:20-cv-03064-TNM. On October 23, 2020, the United States filed a Complaint alleging that Liberty Latin America Ltd.'s proposed acquisition of AT&T Inc.'s wireline telecommunications operations in Puerto Rico would violate Section 7 of the Clayton Act, 15 U.S.C. 18. The proposed Final Judgment, filed at the same time as the Complaint, requires Liberty Latin America Ltd. to divest certain fiber-optic telecommunications assets and customer accounts in Puerto Rico.

Copies of the Complaint, proposed Final Judgment, and Competitive Impact Statement are available for inspection on the Antitrust Division's website at https://www.justice.gov/atr and at the Office of the Clerk of the United States District Court for the District of Columbia. Copies of these materials may be obtained from the Antitrust Division upon request and payment of the copying fee set by Department of Justice regulations.

Public comment is invited within 60 days of the date of this notice. Such comments, including the name of the submitter, and responses thereto, will be posted on the Antitrust Division's website, filed with the Court, and, under certain circumstances, published in the *Federal Register*. Comments should be directed to Scott Scheele, Chief, Telecommunications and Broadband Section, Antitrust Division, Department of Justice, 450 Fifth Street NW, Suite 7000, Washington, DC 20530 (telephone: (202) 616-5924), or

ATR.TEL-Information@usdoj.gov.

Suzanne Morris,

Chief, Premerger and Division Statistics,

Antitrust Division.

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

UNITED STATES OF AMERICA, U.S. Department of Justice Antitrust Division 450 Fifth Street, N.W., Suite 7000 Washington, DC 20530 *Plaintiff,* v. LIBERTY LATIN AMERICA LTD., 1550 Wewatta Street, Suite 710 Denver, CO 80202 LIBERTY COMMUNICATIONS OF PUERTO RICO LLC, 279 Ave. Ponce De Leon San Juan, PR 00917 and AT&T INC., 208 South Akard Street Dallas, TX 75202 *Defendants.*	Civil Action No. 1:20-cv-03064-TNM

COMPLAINT

The United States of America brings this civil antitrust action to enjoin the acquisition of certain assets of AT&T Inc. in Puerto Rico and the U.S. Virgin Islands by Liberty Latin America Ltd. and to obtain other equitable relief.

I. NATURE OF THE ACTION

1. On October 9, 2019, Liberty Latin America Ltd. ("Liberty") entered into an agreement to purchase the wireless and wireline telecommunications operations of AT&T Inc. ("AT&T") in Puerto Rico and the U.S. Virgin Islands. Liberty does not compete with AT&T in the U.S. Virgin Islands or in the provision of wireless telecommunications services in Puerto Rico. Liberty does, however, compete directly

with AT&T in the provision of wireline telecommunications services in Puerto Rico. The proposed transaction would eliminate this competition.

2. Specifically, Liberty and AT&T currently compete to provide wireline telecommunications services over fiber-optic networks that they own in Puerto Rico. Liberty and AT&T use these networks to provide fiber-based connectivity and telecommunications services to enterprise customers across the island. The enterprise customers that purchase these services include businesses of all sizes as well as institutions, such as universities, hospitals, and government agencies. Enterprise customers use these services to reliably transport data among their offices and other locations, place phone calls, and access the internet at high speeds. Many enterprise customers demand the high levels of quality and reliability that fiber-based services provide.

3. Liberty and AT&T have two of the three most extensive fiber-based networks in Puerto Rico. For many buildings on the island, Liberty and AT&T are either the only two providers, or two of only three providers, that own a direct fiber connection to the building. For many other buildings to which Liberty and AT&T do not own direct fiber connections, they are the only two providers, or two of only three providers, with fiber located close enough to connect their networks to the building economically. Liberty and AT&T compete particularly closely for customers that have multiple locations spread across Puerto Rico and demand service from a single provider that can serve all of their locations over its network. The proposed acquisition thus would likely substantially lessen competition in the provision of fiber-based connectivity and telecommunications services to enterprise customers in Puerto Rico in violation of Section 7 of the Clayton Act, 15 U.S.C. § 18.

II. DEFENDANTS AND THE TRANSACTION

4. Liberty—a Bermuda corporation with its executive offices in Denver, Colorado—is a leading telecommunications provider in Latin America and the Caribbean. Across this region, Liberty provides video services, internet access, and home telephony services to more than 6 million subscribers and provides mobile wireless service to approximately 3.6 million subscribers. Liberty generates approximately $3.9 billion in annual revenues. Through its subsidiary Liberty Communications of Puerto Rico LLC ("LCPR"), Liberty operates the largest cable company in Puerto Rico. In 2016, Liberty expanded its Puerto Rico operations by acquiring Cable & Wireless Communications Plc, which controlled Columbus International Inc., a leading provider of fiber-based connectivity and telecommunications services on the island. Today, Liberty operates a network that includes more than 3,000 route miles of fiber-optic facilities in Puerto Rico. Liberty uses this network to provide fiber-based connectivity and telecommunications services to enterprise customers located throughout the island.

5. AT&T—a Delaware corporation headquartered in Dallas, Texas—is a leading provider of telecommunications, media, and technology services globally. AT&T generates approximately $180 billion in annual revenues. Beyond its well-known mobile wireless and residential telecommunications businesses, AT&T is also one of the largest providers of telecommunications services to enterprise customers in the United States. AT&T entered the Puerto Rico market in 2009 through its acquisition of the wireless and wireline operations of Centennial Communications Corp. Today, AT&T provides fiber-based connectivity and telecommunications services to enterprise customers across Puerto Rico over a network that includes over 3,500 route miles of fiber-optic facilities.

6. On October 9, 2019, Liberty announced that it had agreed to purchase AT&T's wireless and wireline telecommunications operations in Puerto Rico and the

U.S. Virgin Islands for $1.95 billion in cash. Upon closing of the transaction, Liberty would take ownership of certain AT&T assets in Puerto Rico, including its wireless and wireline networks, wireless spectrum, contracts, real estate, and most of AT&T's customer relationships on the island.[1]

III. JURISDICTION AND VENUE

7. The United States brings this action under the direction of the Attorney General and pursuant to Section 15 of the Clayton Act, as amended, 15 U.S.C. § 25, to prevent and restrain Liberty, LCPR, and AT&T from violating Section 7 of the Clayton Act, 15 U.S.C. § 18.

8. Liberty, LCPR, and AT&T are engaged in, and their activities substantially affect, interstate commerce. Liberty, LCPR, and AT&T sell wireline telecommunications services in Puerto Rico and the United States. The Court has subject-matter jurisdiction over this action pursuant to Section 15 of the Clayton Act, as amended, 15 U.S.C. § 25, and 28 U.S.C. §§ 1331, 1337(a), and 1345.

9. Defendants Liberty, LCPR, and AT&T have consented to venue and personal jurisdiction in this District. Venue is proper in this District under Section 12 of the Clayton Act, 15 U.S.C. § 22, and 28 U.S.C. § 1391(b)(1) and (c).

IV. BACKGROUND

10. Wireline telecommunications services are critical for transporting the data that individuals, businesses, and other entities transmit. Wireline telecommunications services provided over fiber-optic networks generally provide a higher level of quality and reliability than other types of wireline telecommunications services, such as those provided over legacy copper telephone network facilities or coaxial cable facilities.

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[1] The transaction does not include AT&T's DIRECTV assets in Puerto Rico, any submarine cables and landing stations, certain "global" customer contracts, or spectrum in the 3650-3700 MHz and 39 GHz ranges.

11. Businesses and other institutions, such as universities, hospitals, and government agencies, that purchase telecommunications services are often referred to as "enterprise customers." Enterprise customers generally require higher-quality and more-reliable telecommunications services than the residential telecommunications services that are purchased by consumers. For example, many enterprise customers require very high levels of dedicated bandwidth to allow them to transmit large volumes of data among their offices, and many require services that offer penalty-backed service quality guarantees in order to ensure business continuity. Fiber-based services often carry these features. Accordingly, many enterprise customers depend on fiber-based services to enable their day-to-day operations.

12. In Puerto Rico, fiber-based telecommunications networks include the fiber cables that connect individual buildings to the rest of a provider's network; the fiber cables and related equipment in a provider's network used to transport traffic within a municipality; and the fiber cables that connect municipalities to one another across the island. Fiber cables that connect an individual building, such as an office building, to a provider's network are often referred to as "last-mile" connections. Without a last-mile connection to the building, customers cannot send data to or receive data from any point outside of the building. Without the networks to which those last-mile connections connect, customers cannot communicate with other buildings in the same municipality or reach any points beyond.

13. Liberty and AT&T possess two of the three most extensive fiber-based networks in Puerto Rico. Each owns thousands of last-mile fiber connections, fiber facilities in municipalities across the island, and a fiber-optic "ring" that connects the municipalities to one another. The only other provider with a comparable fiber-based network is the incumbent local telephone company on the island, Puerto Rico Telephone Company, Inc., which does business as "Claro." Together, Liberty, AT&T, and Claro

account for the vast majority of sales of fiber-based connectivity and telecommunications services to enterprise customers in Puerto Rico.

V. RELEVANT MARKETS

14. The provision of fiber-based connectivity and telecommunications services to enterprise customers constitutes a relevant product market and line of commerce under Section 7 of the Clayton Act, 15 U.S.C. § 18.

15. Fiber-based connectivity allows for data to be physically transported across fiber-optic facilities, and telecommunications providers utilize this connectivity to offer a range of telecommunications services. Enterprise customers purchase these services to reliably transport data among their offices and other locations, place phone calls, and access the internet at high speeds. Enterprise customers that purchase fiber-based connectivity and telecommunications services would not turn to other connectivity technologies (such as copper or coaxial cable) in sufficient numbers to make a small but significant increase in price of fiber-based connectivity and telecommunications services unprofitable for a provider of these services.

16. Providers of fiber-based connectivity and telecommunications services to enterprise customers maintain island-wide price lists that apply across Puerto Rico. The actual prices charged for services, however, frequently vary significantly from these lists, as prices are often determined through promotional rates or on an individual basis. In some instances, customers purchase service for individual locations. In other instances, customers purchase packages of services for multiple locations. Many customers with multiple locations spread throughout Puerto Rico demand service from a single provider that can serve all of their locations over its network. Providers with island-wide, fiber-optic networks are best suited to supply such customers.

17. The relevant geographic market for analyzing the effects of the proposed acquisition is no larger than the island of Puerto Rico. The relevant geographic market is

best defined by the locations of the customers who purchase fiber-based connectivity and telecommunications services. Enterprise customers located in Puerto Rico purchase fiber-based connectivity and telecommunications services from providers that can provide service to their locations. Enterprise customers located in Puerto Rico are unlikely to move their offices or other buildings in order to purchase fiber-based connectivity and telecommunications services from firms that do not offer service to their locations. For these reasons, a hypothetical monopolist of fiber-based connectivity and telecommunications services for enterprise customers in Puerto Rico likely would increase its prices in that market by at least a small but significant and non-transitory amount. Therefore, Puerto Rico is a relevant geographic market and "section of the country" within the meaning of Section 7 of the Clayton Act, 15 U.S.C. § 18.

VI. ANTICOMPETITIVE EFFECTS

18. The transaction likely would substantially lessen competition in the market for the provision of fiber-based connectivity and telecommunications services to enterprise customers in Puerto Rico.

19. This market is highly concentrated. Three providers—Liberty, AT&T, and Claro—account for the vast majority of sales. While other providers offer service in Puerto Rico, they collectively account for a small fraction of sales. These smaller providers generally do not own networks of sufficient scale to enable them to compete effectively in many parts of the island.

20. In order for a provider to sell fiber-based connectivity and telecommunications services to enterprise customers over its own network, the provider must either own a last-mile connection to the customer's location or own fiber close enough to the location to allow the provider to build such a connection economically. For many buildings on the island, Liberty and AT&T are either the only two providers, or two of only three providers, that own a last-mile fiber connection to the building. For

many other buildings, Liberty and AT&T are the only two providers, or two of only three providers, with fiber located close enough to the building to be able to construct such a connection economically.

21. A provider that does not own a last-mile connection to a particular customer location can serve enterprise customers at that location over another provider's last-mile connection. It can do so by purchasing wholesale fiber-based connectivity from another provider and reselling that connectivity as part of a broader package of services to the enterprise customer. However, providers that do not own island-wide networks, including a significant number of last-mile connections, are limited in their competitiveness because they are reliant on their wholesale providers for fiber-based connectivity and constrained by the terms that their wholesale providers set for this connectivity.

22. In Puerto Rico, telecommunications providers seeking wholesale fiber-based connectivity most often purchase this connectivity from Liberty, AT&T, or Claro. Other options are limited. Some providers may purchase wholesale connectivity from a subsidiary of Puerto Rico's public utility known as PREPA Networks ("PREPA"), which owns an island-wide fiber ring and is required by law to provide only wholesale connectivity to other telecommunications providers rather than service directly to enterprise customers. PREPA owns far fewer last-mile connections than Liberty, AT&T, and Claro, however, and customers served over the PREPA network account for a very small fraction of the overall market.

23. As the providers with two of the three largest fiber-based networks in Puerto Rico, Liberty and AT&T compete vigorously for enterprise customers across the island. These customers include businesses of all sizes, as well as institutions, such as universities, hospitals, and government agencies. Given the breadth of their networks, Liberty and AT&T compete particularly closely for customers that have multiple

locations spread throughout Puerto Rico and demand service from a single provider that can serve all of their locations over its network.

24. Competition between Liberty and AT&T for enterprise customers takes several forms. In some instances, Liberty or AT&T offers promotional rates or discounts in order to attract customers away from the other. In other instances, customers can extract concessions from Liberty or AT&T by threatening to switch to the other. Liberty or AT&T may also construct new fiber facilities in order to attract customers away from the other. Enterprise customers throughout Puerto Rico have experienced the benefit of this competition in the form of lower prices and higher-quality services.

25. The acquisition of AT&T's wireline telecommunications operations in Puerto Rico by Liberty would represent a loss of this competition. The highly concentrated market for the provision of fiber-based connectivity and telecommunications services to enterprise customers in Puerto Rico would become even more concentrated. The loss of Liberty and AT&T as independent competitors would leave many customers with only one alternative provider and others with no competitive choice at all. This change would likely result in increased prices and lower-quality services for enterprise customers across the island.

VII. ABSENCE OF COUNTERVAILING FACTORS

26. Entry of new competitors in the relevant market is unlikely to prevent or remedy the proposed transaction's anticompetitive effects. Barriers to entry include (i) the substantial amount of time and expense required to construct a fiber-optic network, (ii) the need for a firm seeking to construct such a network to obtain the permits and approvals required to do so, (iii) the significant level of expertise required to successfully offer telecommunications services to enterprise customers, and (iv) the need for a provider to establish a brand and reputation that would allow enterprise customers to entrust the provider with supporting their day-to-day operations.

27. The proposed transaction would be unlikely to generate verifiable, merger-specific efficiencies sufficient to reverse or outweigh the anticompetitive effects that are likely to occur.

VIII. VIOLATIONS ALLEGED

28. The acquisition of AT&T's wireline telecommunications operations in Puerto Rico by Liberty likely would substantially lessen competition in the relevant market in violation of Section 7 of the Clayton Act, 15 U.S.C. § 18.

29. Unless enjoined, the acquisition would likely have the following anticompetitive effects, among others:

a. competition in the market for the provision of fiber-based connectivity and telecommunications services to enterprise customers in Puerto Rico would be substantially lessened;

b. prices in the market for the provision of fiber-based connectivity and telecommunications services to enterprise customers in Puerto Rico would increase; and

c. quality of service in the market for the provision of fiber-based connectivity and telecommunications services to enterprise customers in Puerto Rico would decline.

IX. REQUESTED RELIEF

30. The United States requests that this Court:

a. adjudge and decree that Liberty's acquisition of AT&T's wireline telecommunications operations in Puerto Rico would violate Section 7 of the Clayton Act, 15 U.S.C. § 18;

b. permanently enjoin and restrain Liberty and AT&T and all persons acting on their behalf from carrying out the stock purchase agreement dated October 9, 2019, or from entering into or carrying out any contract,

agreement, plan, or understanding, by which Liberty would acquire the assets that are subject to the agreement;

c. award the United States its costs for this action; and

d. award the United States such other and further relief as the Court deems just and proper

Dated: October 23, 2020

Respectfully submitted,

FOR PLAINTIFF UNITED STATES:

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*LEAD ATTORNEY TO BE NOTICED

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

UNITED STATES OF AMERICA, Plaintiff, v. LIBERTY LATIN AMERICA LTD., LIBERTY COMMUNICATIONS OF PUERTO RICO LLC, and AT&T INC. Defendants.	Civil Action No. 1:20-cv-03064-TNM

PROPOSED FINAL JUDGMENT

WHEREAS, Plaintiff, United States of America, filed its Complaint on October 23, 2020;

AND WHEREAS, the United States and Defendants, Liberty Latin America Ltd. ("LLA"), Liberty Communications of Puerto Rico LLC ("LCPR"), and AT&T Inc. ("AT&T"), have consented to entry of this Final Judgment without the taking of testimony, without trial or adjudication of any issue of fact or law, and without this Final Judgment constituting any evidence against or admission by any party regarding any issue of fact or law;

AND WHEREAS, Defendants agree to make a divestiture to remedy the loss of competition alleged in the Complaint;

AND WHEREAS, Defendants represent that the divestiture and other relief required by this Final Judgment can and will be made and that Defendants will not later

raise a claim of hardship or difficulty as grounds for asking the Court to modify any provision of this Final Judgment;

NOW THEREFORE, it is ORDERED, ADJUDGED, AND DECREED:

I. JURISDICTION

The Court has jurisdiction over the subject matter of and each of the parties to this action. The Complaint states a claim upon which relief may be granted against Defendants under Section 7 of the Clayton Act, as amended (15 U.S.C. § 18).

II. DEFINITIONS

As used in this Final Judgment:

A. "AT&T" means Defendant AT&T Inc., a Delaware corporation with its headquarters in Dallas, Texas, its successors and assigns, and its subsidiaries, divisions, groups, affiliates, partnerships, and joint ventures, and their directors, officers, managers, agents, and employees.

B. "LCPR" means Defendant Liberty Communications of Puerto Rico LLC, a Puerto Rico limited liability company with its headquarters in San Juan, Puerto Rico, its successors and assigns, and its subsidiaries, divisions, groups, affiliates, partnerships, and joint ventures, and their directors, officers, managers, agents, and employees.

C. "LLA" means Defendant Liberty Latin America Ltd., a Bermuda corporation with its headquarters in Hamilton, Bermuda, and executive offices in Denver, Colorado, its successors and assigns, and its subsidiaries, divisions, groups, affiliates, partnerships, and joint ventures, and their directors, officers, managers, agents, and employees.

D. "WorldNet" means WorldNet Telecommunications Inc., a Puerto Rico corporation with its headquarters in Guaynabo, Puerto Rico, its successors and assigns, and its subsidiaries, divisions, groups, affiliates, partnerships, and joint ventures, and their directors, officers, managers, agents, and employees.

E. "Acquirer" means WorldNet or another entity to which Defendants divest the Divestiture Assets.

F. "AT&T Aerial Fiber Core Segments" means the aerial fiber core network segments that connect AT&T's communications hubs to each other across Puerto Rico (excluding (1) the segment between Arecibo and Ponce and (2) the segments between or among Guaynabo, AT&T Plaza, Hato Rey, and Carolina).

G. "AT&T Customers" means enterprise and wholesale customers in Puerto Rico (excluding AT&T Global Services customers) that purchased services from AT&T immediately prior to the Transaction, all of which are being transferred to LLA upon closing of the Transaction.

H. "Columbus Customers" means LLA customers with one or more service locations on the Columbus Network but does not include (1) AT&T Customers or (2) LLA customers who purchase video, hybrid fiber-coaxial, wholesale, or residential services.

I. "Columbus Divestiture Assets" means all of LLA's rights, titles, and interests in, to, or under:

1. the Columbus Network; and
2. all LLA assets related to or used in connection with the provision of fiber-based connectivity and/or telecommunications services to locations on the Columbus Network or related to or used in connection with Columbus Customers, including:
    a. all active or pending licenses, permits, certifications, approvals, consents, registrations, and waivers issued by any governmental organization;
    b. all rights of way, easements, and access agreements;

c. all contracts, contractual rights, agreements, leases, commitments, certifications, and understandings;

d. all Columbus Customer lists, contracts, accounts, relationships, and credit records;

e. all intellectual property associated with the Columbus brand, including copyrights, trademarks, trade names, service marks, and service names; and

f. all records and data, including all repair, maintenance, and performance records.

Provided, however, that the Columbus Divestiture Assets do not include (1) any subsea cable or any connection rights to subsea cable; (2) customer contracts for customers to whom LLA provides video, hybrid fiber-coaxial, wholesale, or residential services; (3) the LCPR Network; (4) the IRU between LCPR and Cable & Wireless Puerto Rico Inc. effective as of April 1, 2019; or (5) the IRU between Columbus Networks of Puerto Rico LLC and Liberty Communications of Puerto Rico LLC effective as of October 1, 2020.

J. "Columbus Network" means the fiber-based communication system in the San Juan Metro Area that LLA acquired as part of its May 17, 2016, acquisition of Cable & Wireless Communications, including colocation rights or a leasehold at the communications hubs located at Ana G. Méndez, Bayamón Corujo, Double Tree, MCS, and Metro Office Park; the equipment in those hubs; the facilities connecting the hubs to each other and to Columbus Customer locations; and any customer premises equipment at Columbus Customer locations.

K. "Construction Contractors" means individuals or companies hired by Defendants

to conduct construction activities, which include contacting customers to request permission to conduct site surveys and obtain building access for construction activities.

L. "Divestiture Assets" means the Columbus Divestiture Assets, the LCPR Divestiture Assets, and the LCPR IRU.

M. "Divestiture Date" means the date on which LLA and the Acquirer close on a transaction effecting the required divestiture.

N. "IRU" means one or more grants of an indefeasible right of use, a long-term interest that gives the holder of such interest the right for either (1) the exclusive use of specific fiber strands or other communications facilities or (2) the exclusive use of a specified amount of capacity in a fiber-based cable or other communications facility.

O. "LCPR Customers" means LLA customers with one or more service locations on the LCPR Network but does not include (1) AT&T Customers; (2) LLA customers who purchase video, hybrid fiber-coaxial, wholesale, or residential services; or (3) customers solely receiving service for dedicated subsea capacity.

P. "LCPR Network" means the fiber-based communication system owned by LCPR in Puerto Rico as of the date immediately preceding the closing of the Transaction, including all LCPR hubs in Puerto Rico (other than Columbus Network hubs), the equipment in those hubs, and the facilities connecting the hubs to each other and to LCPR Customer locations, and any customer premises equipment at LCPR Customer locations.

Q. "LCPR Divestiture Assets" means all of LLA's rights, titles, and interests in, to, or under:

1. all facilities owned by LCPR that are used to serve LCPR Customers exclusively; and
2. all other LLA assets related to or used in connection with the provision of fiber-based connectivity and/or telecommunications services to

LCPR Customers or with facilities that are used to serve LCPR Customers exclusively, including:

a. all licenses, permits, certifications, approvals, consents, registrations, and waivers issued by any governmental organization;

b. all rights of way, easements, and access agreements;

c. all contracts, contractual rights, agreements, leases, commitments, certifications, and understandings;

d. all LCPR Customer lists, contracts, accounts, relationships, and credit records; and

e. all records and data, including all repair, maintenance, and performance records.

Provided, however, that the LCPR Divestiture Assets do not include (1) assets used in the provision of video, hybrid fiber-coaxial, wholesale, or residential data services; (2) customer contracts for customers to whom LCPR provides video, hybrid fiber-coaxial, wholesale, or residential data services; (3) customer premises equipment for such customers or fiber drops to such customer locations; (4) any subsea cable or any connection rights to subsea cable; or (5) any assets that are required for the operation of the LCPR Network but are not required for the provision of fiber-based connectivity and/or telecommunications services to LCPR Customers.

R. "LCPR IRU" means an exclusive IRU to provide fiber-based connectivity and telecommunications services over all portions of the LCPR Network that were used as of October 15, 2020 to serve LCPR Customers but are not included in the LCPR Divestiture Assets, the term of which is (1) at least five years for fiber routes to LCPR Customer locations within one mile of the Columbus Network; and (2) at least 15 years for all other fiber routes with one five-year extension at the option of the Acquirer.

S. "Regulatory Approvals" means (1) any approvals or clearances from the Federal Communications Commission, from any agency of Puerto Rico or its subdivisions, or under antitrust or competition laws that are required for the Transaction to proceed; and (2) any approvals or clearances pursuant to filings with CFIUS or under antitrust, competition, or other U.S. or international laws that are required for Acquirer's acquisition of the Divestiture Assets to proceed.

T. "Relevant Personnel" means all full-time, part-time, or contract employees of LCPR, wherever located, who spent all, or a majority, of their time in the operation of the Divestiture Assets at any time between January 1, 2019, and October 15, 2020, including sales, marketing, and sales support personnel, as well as network and operations personnel, including customer care, service installation technicians, service repair technicians, engineering, and outside plant personnel.

U. "San Juan Metro Area" means the municipalities of San Juan, Bayamón, Guaynabo, Carolina, Trujillo Alto, Cataño, Toa Baja, and Toa Alta.

V. "Transferred Customers" means the Columbus Customers and the LCPR Customers.

W. "Transaction" means the proposed acquisition of AT&T's wireline and wireless assets in Puerto Rico and the U.S. Virgin Islands by LLA.

III. APPLICABILITY

A. This Final Judgment applies to LLA, LCPR, and AT&T, as defined above, and all other persons in active concert or participation with any Defendant who receive actual notice of this Final Judgment.

B. If, prior to complying with Sections IV and V of this Final Judgment, LLA sells or otherwise disposes of all or substantially all of its assets or of business units that include the Divestiture Assets, AT&T Aerial Fiber Core Segments, or poles or conduit subject to the Acquirer options provided for in Paragraphs IV.J – IV.M, LLA must

require any purchaser to be bound by the provisions of this Final Judgment that apply to the assets to be sold. LLA need not obtain such an agreement from Acquirer.

IV. DIVESTITURE

A. LLA is ordered and directed, within 30 calendar days after the Court's entry of the Asset Preservation Stipulation and Order in this matter, to divest the Divestiture Assets in a manner consistent with this Final Judgment to an Acquirer acceptable to the United States, in its sole discretion. The United States, in its sole discretion, may agree to one or more extensions of this time period not to exceed 60 calendar days in total and will notify the Court of any extensions.

B. If Acquirer or LLA has initiated contact with any governmental entity to seek any Regulatory Approval within five calendar days after the United States provides written notice pursuant to Paragraph VI.C. that it does not object to the proposed Acquirer, the time period provided in Paragraph IV.A. will be extended until 15 calendar days after that Regulatory Approval is received, except that the extension allowed for securing Regulatory Approvals may be no longer than 90 calendar days past the time period provided in Paragraph IV.A., unless the United States, in its sole discretion, consents to an additional extension.

C. LLA must use its best efforts to divest the Divestiture Assets as expeditiously as possible, and Defendants may not take any action to impede the permitting, operation, or divestiture of the Divestiture Assets.

D. Unless the United States otherwise consents in writing, the divestiture pursuant to this Final Judgment must include the entire Divestiture Assets and must be accomplished in such a way as to satisfy the United States, in its sole discretion, that the Divestiture Assets can and will be used by Acquirer as part of a viable, ongoing business of providing fiber-based connectivity and telecommunications services to enterprise

customers in Puerto Rico and that the divestiture to Acquirer will remedy the competitive harm alleged in the Complaint.

E. LLA must provide Acquirer with an LCPR IRU to provide fiber-based connectivity and telecommunications services over specific fiber strands in the LCPR Network that are dedicated to Acquirer's use. For (a) individual distribution fiber routes in the San Juan Metro Area where LLA's existing usage of the fiber exceeded industry best practices as of October 15, 2020, and (b) routes on LCPR's fiber core network, the LCPR IRU may provide Acquirer with the right to use a fixed amount of capacity rather than dedicated fiber strands. This fixed amount of capacity must be equal to the amount of capacity on the route that was used by LLA to serve LCPR Customers as of October 15, 2020, plus a commercially reasonable amount of additional capacity to allow Acquirer to provide additional services to both LCPR Customers and other customers in the future.

1. The LCPR IRU must include all rights and interests necessary to enable the LCPR IRU to be used by Acquirer to provide fiber-based connectivity and telecommunications services, including the right for Acquirer to splice into the IRU fiber at existing splice points or at new splice points requested by Acquirer, *provided, however*, that the LCPR IRU need not permit the Acquirer to splice at new splice points that would jeopardize the integrity of the LCPR Network.
2. The LCPR IRU must provide Acquirer with repair, maintenance, and installation capabilities of the same quality and speed that LCPR utilizes for its own network.
3. The LCPR IRU must not require Acquirer to pay a monthly or other recurring fee to preserve or make use of its rights but may contain other commercially reasonable and customary terms, including terms

for payment to the grantor for ancillary services, such as non-recurring costs or repair fees.

4. The LCPR IRU must include an option, exercisable at the option of the Acquirer on commercially reasonable terms, for Acquirer to purchase the right to use the IRU to provide residential service.

5. Within 30 calendar days after the Court's entry of the Asset Preservation Stipulation and Order in this matter, LLA must identify to Acquirer and the United States each of the fiber routes to LCPR Customer locations within one mile of the Columbus Network.

F. The divestiture must be made to an Acquirer that, in the United States' sole judgment, has the intent and capability (including the necessary managerial, operational, technical, and financial capability) to compete effectively in the provision of fiber-based connectivity and telecommunications services to enterprise customers in Puerto Rico.

G. The divestiture must be accomplished so as to satisfy the United States, in its sole discretion, that none of the terms of any agreement between Acquirer and LLA gives LLA the ability unreasonably to raise Acquirer's costs, to lower Acquirer's efficiency, or otherwise to interfere in the ability of Acquirer to compete effectively.

H. In the event LLA is attempting to divest the Divestiture Assets to an Acquirer other than WorldNet, LLA promptly must make known, by usual and customary means, the availability of the Divestiture Assets. LLA must inform any person making an inquiry regarding a possible purchase of the Divestiture Assets that the Divestiture Assets are being divested in accordance with this Final Judgment and must provide that person with a copy of this Final Judgment. LLA must offer to furnish to all prospective Acquirers, subject to customary confidentiality assurances, all information and documents relating to the Divestiture Assets that are customarily provided in a due-

diligence process; *provided, however,* that LLA need not provide information or documents subject to the attorney-client privilege or work-product doctrine. LLA must make all information and documents available to the United States at the same time that the information and documents are made available to any other person.

I. LLA must provide prospective Acquirers with (1) access to make inspections of the Divestiture Assets; (2) access to all environmental, zoning, and other permitting documents and information; and (3) access to all financial, operational, or other documents and information customarily provided as part of a due diligence process. LLA also must disclose all encumbrances on any part of the Divestiture Assets, including on intangible property.

J. At the option of Acquirer, within three years after the Divestiture Date, LLA must sell to Acquirer, on a segment-by-segment basis, and on commercially reasonable terms to be approved by the United States in its sole discretion, each of the AT&T Aerial Fiber Core Segments. The United States, in its sole discretion, may consent to one or more extensions of this time period not to exceed one year.

1. Within 30 calendar days after the Court's entry of the Asset Preservation Stipulation and Order in this matter, LLA must identify and describe with specificity each of the AT&T Aerial Fiber Core Segments to Acquirer and the United States.
2. If LLA serves customer locations that cannot be migrated off a segment acquired pursuant to this Paragraph IV.J., LLA may negotiate terms with Acquirer pursuant to which LLA may retain an IRU necessary to serve such customer locations.

K. From the Divestiture Date until the date on which LLA completes its obligation under Paragraph IV.J, LLA must maintain the AT&T Aerial Fiber Core Segments in the ordinary course of business and consistent with past practices as

ongoing, economically viable, competitive assets and must take all other actions necessary to preserve and maintain the full economic viability, marketability, and competitiveness of the AT&T Aerial Fiber Core Segments, including:

1. LLA must maintain all licenses, permits, approvals, authorizations, and certifications related to or necessary for the operation of the AT&T Aerial Fiber Core Segments and must maintain the AT&T Aerial Fiber Core Segments in compliance with all regulatory obligations and requirements;
2. LLA must ensure that the AT&T Aerial Fiber Core Segments are fully maintained in operable condition, including by maintaining and adhering to normal repair and maintenance schedules for the AT&T Aerial Fiber Core Segments.
3. Except as approved by the United States in accordance with the terms of the proposed Final Judgment, LLA may not sell, lease, assign, transfer, pledge, or encumber, any AT&T Aerial Fiber Core Segment(s) prior to completing its obligation under Paragraph IV.J.
4. LLA may decommission AT&T Aerial Core Fiber Segment(s), so long as it provides at least 60 days' advance written notice to Acquirer before doing so. If Acquirer does not exercise its option to purchase the identified segment(s) within 60 days after such notice is given, LLA may proceed with decommissioning.

L. At the option of Acquirer, at any time during the term of this Final Judgment, LLA must grant to Acquirer, on commercially reasonable terms comparable to those found in LLA's other pole attachment agreements and to be approved by the United States in its sole discretion, the right to attach fiber to LLA-owned poles located on the island of Puerto Rico where space on such poles is available. LLA is not required to

reserve space on poles for Acquirer or to obtain regulatory approvals for Acquirer to install pole attachments.

M. At the option of Acquirer, at any time within three years of the Divestiture Date, LLA must sell to Acquirer, on commercially reasonable terms to be approved by the United States in its sole discretion, up to one inch in diameter of space, and the right to install fiber cables in such space, in any underground conduit in Puerto Rico that (1) was owned by LLA or AT&T as of October 15, 2020, and (2) contains at least two inches in diameter of unused space (measured as the sum of all unused space, including space spread across multiple innerducts, within the conduit) as of the date of Acquirer's request.

1. Within 30 calendar days after the Court's entry of the Asset Preservation Stipulation and Order in this matter, LLA must identify to Acquirer and the United States all underground conduit routes in Puerto Rico that (1) were owned by LLA or AT&T as of October 15, 2020, and (2) contained at least two inches in diameter of unused space (measured as the sum of all unused space, including space spread across multiple innerducts, within the conduit) as of October 15, 2020.
2. Prior to deploying new facilities in any conduit route identified pursuant to Paragraph IV.M.1 during the three-year period specified above or during any extension under Paragraph IV.M.3 below, LLA must provide at least 60 days' advance written notice to Acquirer if such deployment would result in less than two inches in diameter of unused space (measured as the sum of all unused space, including space spread across multiple innerducts, within the conduit) remaining in the conduit. If Acquirer does not exercise its option to acquire that

conduit space within 60 days after such notice is given, then LLA may proceed with the deployment.

3. If the United States consents to an extension or extensions of the period specified in Paragraph IV.J of this Final Judgment, the period within which Acquirer must exercise its option to acquire conduit space will be extended by the same amount of time.

4. Nothing in this Paragraph IV.M requires LLA to bear the expense of Acquirer's installation of fiber in LLA conduit or to obtain permits, authorizations, or regulatory approvals for such installation.

N. LLA must cooperate with and assist Acquirer to identify and hire all Relevant Personnel.

1. Within 10 business days following the filing of the Complaint in this matter, LLA must identify all Relevant Personnel to Acquirer and the United States, including by providing organization charts covering all Relevant Personnel.

2. Within 10 business days following receipt of a request by Acquirer, the United States, or the monitoring trustee, LLA must provide to Acquirer, the United States, and the monitoring trustee the following additional information related to Relevant Personnel: name; job title; current salary and benefits including most recent bonus paid, aggregate annual compensation, current target or guaranteed bonus, if any, any retention agreement or incentives, and any other payments due to or promises made to the employee; descriptions of reporting relationships, past experience, responsibilities, and training and educational histories; lists of all certifications; and all job performance evaluations. If LLA is barred by any applicable law from providing

any of this information, LLA must provide, within 10 business days following receipt of the request, the requested information to the full extent permitted by law and also must provide a written explanation of LLA's inability to provide the remaining information.

3. At the request of Acquirer, LLA must promptly make Relevant Personnel available for private interviews with Acquirer during normal business hours at a mutually agreeable location.

4. Defendants must not interfere with any effort by Acquirer to employ any Relevant Personnel. Interference includes, but is not limited to, offering to increase the compensation or improve the benefits of Relevant Personnel unless: (a) the offer is part of a company-wide increase in compensation or improvement in benefits that was announced prior to October 9, 2019; or (b) the offer is approved by the United States, in its sole discretion. Defendants' obligations under this Paragraph IV.N.4 will expire six months after the Divestiture Date.

5. For Relevant Personnel who elect employment with Acquirer within six months of the Divestiture Date, LLA must waive all non-compete and non-disclosure agreements, vest all unvested pension and other equity rights, provide any pay pro-rata, provide all other compensation and benefits that those Relevant Personnel have fully or partially accrued, and provide all benefits that those Relevant Personnel otherwise would have been provided had the Relevant Personnel continued employment with LLA, including any retention bonuses or payments. LLA may maintain reasonable restrictions on disclosure by Relevant Personnel of LLA's proprietary non-public information that

is unrelated to the Divestiture Assets and not otherwise required to be disclosed by this Final Judgment.

6. For a period of one year from the Divestiture Date, Defendants may not solicit to rehire Relevant Personnel who were hired by Acquirer within six months of the Divestiture Date unless (a) an individual is terminated or laid off by Acquirer or (b) Acquirer agrees in writing that Defendants may solicit to rehire that individual. Nothing in this Paragraph IV.N.6 prohibits Defendants from advertising employment openings using general solicitations or advertisements and rehiring Relevant Personnel who apply for an employment opening through a general solicitation or advertisement.

O. LLA must warrant to Acquirer that (1) the Divestiture Assets will be operational and without material defect on the date of their transfer to the Acquirer; (2) there are no material defects in the environmental, zoning, or other permits pertaining to the operation of the Divestiture Assets; and (3) LLA has disclosed all encumbrances on any part of the Divestiture Assets, including on intangible property. Following the sale of the Divestiture Assets, LLA must not undertake, directly or indirectly, challenges to the environmental, zoning, or other permits pertaining to the operation of the Divestiture Assets.

P. LLA must assign, subcontract, or otherwise transfer all contracts, agreements, and customer relationships (or portions of such contracts, agreements, and customer relationships) included in the Divestiture Assets, including all supply and sales contracts, to Acquirer; *provided, however,* that for any contract or agreement that requires the consent of another party to assign, subcontract, or otherwise transfer, LLA must use best efforts to accomplish the assignment, subcontracting, or transfer. LLA must not interfere with any negotiations between Acquirer and a contracting party.

Q. LLA must make best efforts to assist Acquirer to obtain all necessary licenses, registrations, and permits to operate the Divestiture Assets. Until Acquirer obtains the necessary licenses, registrations, and permits, LLA must provide Acquirer with the benefit of LLA's licenses, registrations, and permits to the full extent permissible by law.

R. At the option of Acquirer, and subject to approval by the United States, in its sole discretion, on or before the Divestiture Date, LLA must enter into a contract to provide transition services for back office, billing, provisioning, human resources, accounting, employee health and safety, and information technologies services and support for a period of up to 18 months on terms and conditions reasonably related to market conditions for the provision of transition services. The United States, in its sole discretion, may approve one or more extensions of any contract for transition services, for a total of up to an additional 6 months. If Acquirer seeks an extension of the term of any transition services contract, LLA must notify the United States in writing at least three months prior to the date the contract for transition services expires. Acquirer may terminate a transition services contract without cost or penalty at any time upon commercially reasonable notice.

S. For a period of one year following the Divestiture Date, LLA must not initiate customer-specific communications to solicit any Transferred Customer; *provided, however,* that: (1) LLA may respond to inquiries initiated by Transferred Customers and enter into negotiations at the request of such customers (including responding to requests for quotation or proposal) to supply any business, whether or not such business was included in the Divestiture Assets; and (2) LLA must maintain a log of telephonic, electronic, in-person, and other communications that constitute inquiries or requests from Transferred Customers within the meaning of this Paragraph IV.S and make it available to the United States for inspection upon request. For so long as this prohibition is in

effect, LLA must ensure that its Construction Contractors, in performing work on behalf of LLA, do not initiate communications with any Transferred Customer unless (1) the Transferred Customer is located in a building with multiple tenants and at least one of those tenants is not a Transferred Customer; and (2) the Transferred Customer is the landlord of the building or otherwise has authority to make decisions related to telecommunications services for the entire building. For the avoidance of doubt, nothing in this Final Judgment prevents LLA from initiating customer-specific communications with any AT&T Customer with respect to those services provided by AT&T to such customer as of the closing date of the Transaction.

T. If any term of an agreement between LLA and Acquirer to effectuate the divestiture required by this Final Judgment varies from a term of this Final Judgment, to the extent that LLA cannot fully comply with both, this Final Judgment determines LLA's obligations.

V. APPOINTMENT OF DIVESTITURE TRUSTEE

A. If LLA has not divested the Divestiture Assets within the period specified in Paragraph IV.A, LLA must immediately notify the United States of that fact in writing. Upon motion of the United States, which Defendants may not oppose, the Court will appoint a divestiture trustee selected by the United States and approved by the Court to effect the divestiture of the Divestiture Assets.

B. After the appointment of a divestiture trustee by the Court, only the divestiture trustee will have the right to sell the Divestiture Assets. The divestiture trustee will have the power and authority to accomplish the divestiture to an Acquirer acceptable to the United States, in its sole discretion, at a price and on terms as are then obtainable upon reasonable effort by the divestiture trustee, subject to the provisions of Sections IV, V, and VI of this Final Judgment, and will have other powers as the Court deems

appropriate. The divestiture trustee must sell the Divestiture Assets as quickly as possible.

C. LLA may not object to a sale by the divestiture trustee on any ground other than malfeasance by the divestiture trustee. Objections by LLA must be conveyed in writing to the United States and the divestiture trustee within 10 calendar days after the divestiture trustee has provided the notice of proposed divestiture required under Section VI.

D. The divestiture trustee will serve at the cost and expense of LLA pursuant to a written agreement, on terms and conditions, including confidentiality requirements and conflict of interest certifications, that are approved by the United States.

E. The divestiture trustee may hire at the cost and expense of LLA any agents or consultants, including investment bankers, attorneys, and accountants, that are reasonably necessary in the divestiture trustee's judgment to assist with the divestiture trustee's duties. These agents or consultants will be accountable solely to the divestiture trustee and will serve on terms and conditions, including terms and conditions governing confidentiality requirements and conflict-of-interest certifications, that are approved by the United States.

F. The compensation of the divestiture trustee and agents or consultants hired by the divestiture trustee must be reasonable in light of the value of the Divestiture Assets and based on a fee arrangement that provides the divestiture trustee with incentives based on the price and terms of the divestiture and the speed with which it is accomplished. If the divestiture trustee and LLA are unable to reach agreement on the divestiture trustee's compensation or other terms and conditions of engagement within 14 calendar days of the appointment of the divestiture trustee by the Court, the United States may, in its sole discretion, take appropriate action, including by making a recommendation to the Court. Within three business days of hiring an agent or consultant, the divestiture trustee must

provide written notice of the hiring and rate of compensation to LLA and the United States.

G. The divestiture trustee must account for all monies derived from the sale of the Divestiture Assets sold by the divestiture trustee and all costs and expenses incurred. Within 30 calendar days of the Divestiture Date, the divestiture trustee must submit that accounting to the Court for approval. After approval by the Court of the divestiture trustee's accounting, including fees for unpaid services and those of agents or consultants hired by the divestiture trustee, all remaining money must be paid to LLA and the trust will then be terminated.

H. LLA must use its best efforts to assist the divestiture trustee to accomplish the required divestiture. Subject to reasonable protection for trade secrets, other confidential research, development, or commercial information, or any applicable privileges, LLA must provide the divestiture trustee and agents or consultants retained by the divestiture trustee with full and complete access to all personnel, books, records, and facilities of the Divestiture Assets. LLA also must provide or develop financial and other information relevant to the Divestiture Assets that the divestiture trustee may reasonably request. LLA must not take any action to interfere with or to impede the divestiture trustee's accomplishment of the divestiture.

I. The divestiture trustee must maintain complete records of all efforts made to sell the Divestiture Assets, including by filing monthly reports with the United States setting forth the divestiture trustee's efforts to accomplish the divestiture ordered by this Final Judgment. The reports must include the name, address, and telephone number of each person who, during the preceding month, made an offer to acquire, expressed an interest in acquiring, entered into negotiations to acquire, or was contacted or made an inquiry about acquiring any interest in the Divestiture Assets and must describe in detail each contact with any such person.

J. If the divestiture trustee has not accomplished the divestiture ordered by this Final Judgment within six months of appointment, the divestiture trustee must promptly provide the United States with a report setting forth: (1) the divestiture trustee's efforts to accomplish the required divestiture; (2) the reasons, in the divestiture trustee's judgment, why the required divestiture has not been accomplished; and (3) the divestiture trustee's recommendations for completing the divestiture. Following receipt of that report, the United States may make additional recommendations consistent with the purpose of the trust to the Court. The Court thereafter may enter such orders as it deems appropriate to carry out the purpose of this Final Judgment, which may include extending the trust and the term of the divestiture trustee's appointment by a period requested by the United States.

K. The divestiture trustee will serve until divestiture of all Divestiture Assets is completed or for a term otherwise ordered by the Court.

L. If the United States determines that the divestiture trustee is not acting diligently or in a reasonably cost-effective manner, the United States may recommend that the Court appoint a substitute divestiture trustee.

VI. NOTICE OF PROPOSED DIVESTITURE

A. Within two business days following execution of a definitive divestiture agreement, LLA or the divestiture trustee, whichever is then responsible for effecting the divestiture, must notify the United States of a proposed divestiture required by this Final Judgment. If the divestiture trustee is responsible for completing the divestiture, the divestiture trustee also must notify LLA. The notice must set forth the details of the proposed divestiture and list the name, address, and telephone number of each person not previously identified who offered or expressed an interest in or desire to acquire any ownership interest in the Divestiture Assets.

B. Within 15 calendar days of receipt by the United States of this notice, the United States may request from Defendants, the proposed Acquirer, other third parties, or the divestiture trustee additional information concerning the proposed divestiture, the proposed Acquirer, and other prospective Acquirers. Defendants and the divestiture trustee must furnish the additional information requested within 15 calendar days of the receipt of the request unless the United States provides written agreement to a different period.

C. Within 45 calendar days after receipt of the notice required by Paragraph VI.A. or within 20 calendar days after the United States has been provided the additional information requested pursuant to Paragraph VI.B., whichever is later, the United States will provide written notice to LLA and any divestiture trustee that states whether or not the United States, in its sole discretion, objects to Acquirer or any other aspect of the proposed divestiture. Without written notice that the United States does not object, a divestiture may not be consummated. If the United States provides written notice that it does not object, the divestiture may be consummated, subject only to LLA's limited right to object to the sale under Paragraph V.C. of this Final Judgment. Upon objection by LLA pursuant to Paragraph V.C., a divestiture by the divestiture trustee may not be consummated unless approved by the Court.

D. No information or documents obtained pursuant to this Section VI may be divulged by the United States to any person other than an authorized representative of the executive branch of the United States, except in the course of legal proceedings to which the United States is a party, including grand-jury proceedings, for the purpose of evaluating a proposed Acquirer or securing compliance with this Final Judgment, or as otherwise required by law.

E. In the event of a request by a third party for disclosure of information under the Freedom of Information Act, 5 U.S.C. § 552, the Antitrust Division will act in

accordance with that statute, and the Department of Justice regulations at 28 C.F.R. part 16, including the provision on confidential commercial information, at 28 C.F.R. § 16.7. Persons submitting information to the Antitrust Division should designate the confidential commercial information portions of all applicable documents and information under 28 C.F.R. § 16.7. Designations of confidentiality expire ten years after submission, "unless the submitter requests and provides justification for a longer designation period." *See* 28 C.F.R. § 16.7(b).

F. If at the time that a person furnishes information or documents to the United States pursuant to this Section VI, that person represents and identifies in writing information or documents for which a claim of protection may be asserted under Rule 26(c)(1)(G) of the Federal Rules of Civil Procedure, and marks each pertinent page of such material, "Subject to claim of protection under Rule 26(c)(1)(G) of the Federal Rules of Civil Procedure," the United States must give that person ten calendar days' notice before divulging the material in any legal proceeding (other than a grand-jury proceeding).

VII. FINANCING

Defendants may not finance all or any part of Acquirer's purchase of all or part of the Divestiture Assets or Acquirer's exercise of any options available under Paragraphs IV.J – IV.M of this Final Judgment.

VIII. ASSET PRESERVATION OBLIGATIONS

Defendants must take all steps necessary to comply with the Asset Preservation Stipulation and Order entered by the Court. Defendants must take no action that would jeopardize the divestiture ordered by the Court.

IX. AFFIDAVITS

A. Within 20 calendar days of the filing of the Complaint in this matter, and every 30 calendar days thereafter until the Divestiture Date, each Defendant must deliver

to the United States an affidavit, signed by that Defendant's Chief Financial Officer and General Counsel, describing the fact and manner of that Defendant's compliance with this Final Judgment. The United States, in its sole discretion, may approve different signatories for the affidavits. Defendant AT&T's obligations under this Paragraph IX.A shall cease 30 calendar days after the closing of the Transaction.

B. Each affidavit must include: (1) the name, address, and telephone number of each person who, during the preceding 30 calendar days, made an offer to acquire, expressed an interest in acquiring, entered into negotiations to acquire, or was contacted or made an inquiry about acquiring, an interest in the Divestiture Assets and describe in detail each contact with such persons during that period; (2) a description of the efforts Defendants have taken to solicit buyers for and complete the sale of the Divestiture Assets and to provide required information to prospective Acquirers; and (3) a description of any limitations placed by Defendants on information provided to prospective Acquirers. If the information set forth in the affidavit is true and complete, objection by the United States to information provided by Defendants to prospective Acquirers must be made within 14 calendar days of receipt of the affidavit.

C. Defendants must keep all records of any efforts made to divest the Divestiture Assets until one year after the Divestiture Date.

D. Within 20 calendar days of the filing of the Complaint in this matter, Defendants also must deliver to the United States an affidavit signed by each Defendant's Chief Financial Officer and General Counsel, that describes in reasonable detail all actions Defendants have taken and all steps Defendants have implemented on an ongoing basis to comply with Section VIII of this Final Judgment. The United States, in its sole discretion, may approve different signatories for the affidavits.

E. If Defendants make any changes to the efforts and actions outlined in any earlier affidavits provided pursuant to Paragraph IX.D., Defendants must, within 15

calendar days after any change is implemented, deliver to the United States an affidavit describing those changes.

F. Defendants must keep all records of any efforts made to preserve the Divestiture Assets until one year after the divestiture has been completed.

X. APPOINTMENT OF MONITORING TRUSTEE

A. Upon motion of the United States, which Defendants cannot oppose, the Court will appoint a monitoring trustee selected by the United States and approved by the Court.

B. The monitoring trustee will have the power and authority to monitor LLA's compliance with the terms of this Final Judgment and the Asset Preservation Stipulation and Order entered by the Court and will have other powers as the Court deems appropriate. The monitoring trustee will have no responsibility or obligation for operation of the Divestiture Assets.

C. LLA may not object to actions taken by the monitoring trustee in fulfillment of the monitoring trustee's responsibilities under any Order of the Court on any ground other than malfeasance by the monitoring trustee. Objections by LLA must be conveyed in writing to the United States and the monitoring trustee within ten calendar days of the monitoring trustee's action that gives rise to LLA's objection.

D. The monitoring trustee will serve at the cost and expense of LLA pursuant to a written agreement with LLA and on terms and conditions, including terms and conditions governing confidentiality requirements and conflict of interest certifications, that are approved by the United States.

E. The monitoring trustee may hire, at the cost and expense of LLA, any agents and consultants, including investment bankers, attorneys, and accountants, that are reasonably necessary in the monitoring trustee's judgment to assist with the monitoring trustee's duties. These agents or consultants will be solely accountable to the monitoring

trustee and will serve on terms and conditions, including terms and conditions governing confidentiality requirements and conflict-of-interest certifications, that are approved by the United States.

F. The compensation of the monitoring trustee and agents or consultants retained by the monitoring trustee must be on reasonable and customary terms commensurate with the individuals' experience and responsibilities. If the monitoring trustee and LLA are unable to reach agreement on the monitoring trustee's compensation or other terms and conditions of engagement within 14 calendar days of the appointment of the monitoring trustee, the United States, in its sole discretion, may take appropriate action, including by making a recommendation to the Court. Within three business days of hiring any agents or consultants, the monitoring trustee must provide written notice of the hiring and the rate of compensation to LLA and the United States.

G. The monitoring trustee must account for all costs and expenses incurred.

H. LLA must use its best efforts to assist the monitoring trustee to monitor LLA's compliance with their obligations under this Final Judgment and the Asset Preservation Stipulation and Order. Subject to reasonable protection for trade secrets, other confidential research, development, or commercial information, or any applicable privileges, LLA must provide the monitoring trustee and agents or consultants retained by the monitoring trustee with full and complete access to all personnel, books, records, and facilities of the Divestiture Assets. LLA may not take any action to interfere with or to impede accomplishment of the monitoring trustee's responsibilities.

I. The monitoring trustee must investigate and report on LLA's compliance with this Final Judgment and the Asset Preservation Stipulation and Order. The monitoring trustee must provide periodic reports to the United States setting forth LLA's efforts to comply with their obligations under this Final Judgment and under the Asset

Preservation Stipulation and Order. The United States, in its sole discretion, will set the frequency of the monitoring trustee's reports.

J. The monitoring trustee will serve until the expiration of this Final Judgment, unless the United States in its sole discretion, determines a shorter period is appropriate.

K. If the United States determines that the monitoring trustee is not acting diligently or in a reasonably cost-effective manner, the United States may recommend that the Court appoint a substitute.

XI. FIREWALL

LLA must implement and maintain reasonable procedures to prevent competitively sensitive information from being disclosed, by or through implementation and execution of the obligations in this Final Judgment or any associated agreements, between LLA employees involved in LLA's relationship with Acquirer and any other employee of LLA. For example, the employees of LLA tasked with providing transition services must not share any competitively sensitive information of Acquirer with any other employee of LLA.

LLA must, within 30 business days of the entry of the Asset Preservation Stipulation and Order, submit to the United States (and, if one has been appointed, the monitoring trustee) a document setting forth in detail the procedures implemented to effect compliance with this Section XI. Upon receipt of the document, the United States will inform LLA within 30 business days whether, in its sole discretion, it approves of or rejects LLA's compliance plan. Within ten business days of receiving a notice of rejection, LLA must submit a revised compliance plan. The United States may request that this Court determine whether LLA's proposed compliance plan fulfills the requirements of this Section XI.

XII. COMPLIANCE INSPECTION

A. For the purposes of determining or securing compliance with this Final Judgment or of related orders such as the Asset Preservation Stipulation and Order or of determining whether this Final Judgment should be modified or vacated, upon written request of an authorized representative of the Assistant Attorney General for the Antitrust Division, and reasonable notice to Defendants, Defendants must permit, from time to time and subject to legally recognized privileges, authorized representatives, including agents retained by the United States:

1. to have access during Defendants' office hours to inspect and copy, or at the option of the United States, to require Defendants to provide electronic copies of all books, ledgers, accounts, records, data, and documents in the possession, custody, or control of Defendants relating to any matters contained in this Final Judgment; and
2. to interview, either informally or on the record, Defendants' officers, employees, or agents, who may have their individual counsel present, regarding such matters. The interviews must be subject to the reasonable convenience of the interviewee and without restraint or interference by Defendants.

B. Upon the written request of an authorized representative of the Assistant Attorney General for the Antitrust Division, Defendants must submit written reports or respond to written interrogatories, under oath if requested, relating to any of the matters contained in this Final Judgment.

C. No information or documents obtained pursuant to this Section XII may be divulged by the United States to any person other than an authorized representative of the executive branch of the United States, except in the course of legal proceedings to which the United States is a party, including grand jury proceedings, for the purpose of securing compliance with this Final Judgment, or as otherwise required by law.

D. In the event of a request by a third party for disclosure of information under the Freedom of Information Act, 5 U.S.C. § 552, the Antitrust Division will act in accordance with that statute, and the Department of Justice regulations at 28 C.F.R. part 16, including the provision on confidential commercial information, at 28 C.F.R. § 16.7. Defendants submitting information to the Antitrust Division should designate the confidential commercial information portions of all applicable documents and information under 28 C.F.R. § 16.7. Designations of confidentiality expire ten years after submission, "unless the submitter requests and provides justification for a longer designation period." *See* 28 C.F.R. § 16.7(b).

E. If at the time that Defendants furnish information or documents to the United States pursuant to this Section XII, Defendants represent and identify in writing information or documents for which a claim of protection may be asserted under Rule 26(c)(1)(G) of the Federal Rules of Civil Procedure, and Defendants mark each pertinent page of such material, "Subject to claim of protection under Rule 26(c)(1)(G) of the Federal Rules of Civil Procedure," the United States must give Defendants ten calendar days' notice before divulging the material in any legal proceeding (other than a grand jury proceeding).

XIII. NO REACQUISITION

During the term of this Final Judgment, LLA may not reacquire any part of or any interest in the Divestiture Assets or any AT&T Aerial Fiber Core Segment purchased by Acquirer.

XIV. RETENTION OF JURISDICTION

The Court retains jurisdiction to enable any party to this Final Judgment to apply to the Court at any time for further orders and directions as may be necessary or appropriate to carry out or construe this Final Judgment, to modify any of its provisions, to enforce compliance, and to punish violations of its provisions.

XV. ENFORCEMENT OF FINAL JUDGMENT

A. The United States retains and reserves all rights to enforce the provisions of this Final Judgment, including the right to seek an order of contempt from the Court. Defendants agree that in a civil contempt action, a motion to show cause, or a similar action brought by the United States regarding an alleged violation of this Final Judgment, the United States may establish a violation of this Final Judgment and the appropriateness of a remedy therefor by a preponderance of the evidence, and Defendants waive any argument that a different standard of proof should apply.

B. This Final Judgment should be interpreted to give full effect to the procompetitive purposes of the antitrust laws and to restore the competition the United States alleged was harmed by the challenged conduct. Defendants agree that they may be held in contempt of, and that the Court may enforce, any provision of this Final Judgment that, as interpreted by the Court in light of these procompetitive principles and applying ordinary tools of interpretation, is stated specifically and in reasonable detail, whether or not it is clear and unambiguous on its face. In any such interpretation, the terms of this Final Judgment should not be construed against either party as the drafter.

C. In an enforcement proceeding in which the Court finds that Defendants have violated this Final Judgment, the United States may apply to the Court for a one-time extension of this Final Judgment, together with other relief that may be appropriate. In connection with a successful effort by the United States to enforce this Final Judgment against a Defendant, whether litigated or resolved before litigation, that Defendant agrees to reimburse the United States for the fees and expenses of its attorneys, as well as all other costs including experts' fees, incurred in connection with that enforcement effort, including in the investigation of the potential violation.

D. For a period of four years following the expiration of this Final Judgment, if the United States has evidence that a Defendant violated this Final Judgment before it

expired, the United States may file an action against that Defendant in this Court requesting that the Court order: (1) Defendant to comply with the terms of this Final Judgment for an additional term of at least four years following the filing of the enforcement action; (2) all appropriate contempt remedies; (3) additional relief needed to ensure the Defendant complies with the terms of this Final Judgment; and (4) fees or expenses as called for by this Section XV.

XVI. EXPIRATION OF FINAL JUDGMENT

Unless the Court grants an extension, this Final Judgment will expire ten years from the date of its entry, except that after five years from the date of its entry, this Final Judgment may be terminated upon notice by the United States to the Court and Defendants that the divestiture has been completed and the continuation of this Final Judgment is no longer necessary or in the public interest.

XVII. PUBLIC INTEREST DETERMINATION

Entry of this Final Judgment is in the public interest. The parties have complied with the requirements of the Antitrust Procedures and Penalties Act, 15 U.S.C. § 16, including by making available to the public copies of this Final Judgment and the Competitive Impact Statement, public comments thereon, and any response to comments by the United States. Based upon the record before the Court, which includes the Competitive Impact Statement and, if applicable, any comments and response to comments filed with the Court, entry of this Final Judgment is in the public interest.

Date: _____

[Court approval subject to procedures of Antitrust Procedures and Penalties Act, 15 U.S.C. § 16]

_____
United States District Judge

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

UNITED STATES OF AMERICA, Plaintiff, v. LIBERTY LATIN AMERICA LTD., *et al.* Defendants.	Civil Action No. 1:20-cv-03064-TNM

COMPETITIVE IMPACT STATEMENT

The United States of America, under Section 2(b) of the Antitrust Procedures and Penalties Act, 15 U.S.C. § 16(b)-(h) (the "APPA" or "Tunney Act"), files this Competitive Impact Statement relating to the proposed Final Judgment submitted for entry in this civil antitrust proceeding.

I. NATURE AND PURPOSE OF THE PROCEEDING

Defendant Liberty Latin America Ltd. ("Liberty") and Defendant AT&T Inc. ("AT&T") entered into an agreement, dated October 9, 2019, pursuant to which Liberty would acquire the assets of AT&T's wireless and wireline telecommunications businesses in Puerto Rico and the United States Virgin Islands. The United States filed a civil antitrust Complaint on October 23, 2020, seeking to enjoin the proposed acquisition. The Complaint alleges that the likely effect of this acquisition would be to substantially lessen competition in the market for the provision of fiber-based connectivity and telecommunications services to enterprise customers in Puerto Rico, in violation of Section 7 of the Clayton Act, 15 U.S.C. § 18.

At the same time the Complaint was filed, the United States filed an Asset Preservation Stipulation and Order and proposed Final Judgment, which are designed to

remedy the loss of competition in Puerto Rico alleged in the Complaint. Liberty does not compete with AT&T in the U.S. Virgin Islands. Under the proposed Final Judgment, which is explained more fully below, Liberty is required to divest the fiber-based Columbus network in the metropolitan San Juan area, and additional fiber assets, including fiber facilities and indefeasible rights of use, on Liberty's fiber-optic network across the rest of Puerto Rico (the "Divestiture Assets") to a third-party acquirer. Under the terms of the Asset Preservation Stipulation and Order, Defendants will take certain steps to ensure that the Divestiture Assets are operated as ongoing, economically viable competitive assets and will preserve and maintain the Divestiture Assets and AT&T's aerial fiber-optic core network during the pendency of the required divestiture. In addition, the proposed Final Judgment requires Liberty to provide the acquirer with several options that would allow the acquirer to broaden the reach of its fiber-optic network.

The United States and Defendants have stipulated that the proposed Final Judgment may be entered after compliance with the APPA. Entry of the proposed Final Judgment will terminate this action, except that the Court will retain jurisdiction to construe, modify, or enforce the provisions of the proposed Final Judgment and to punish violations thereof.

II. DESCRIPTION OF THE EVENTS GIVING RISE TO THE ALLEGED VIOLATION

A. The Defendants and the Proposed Transaction

Liberty—a Bermuda corporation with its executive offices in Denver, Colorado—is a leading telecommunications provider in Latin America and the Caribbean. Across this region, Liberty provides video services, internet access, and home telephony services to more than 6 million subscribers and provides mobile wireless service to approximately 3.6 million subscribers. Liberty generates approximately $3.9 billion in annual revenues. Through its subsidiary Liberty Communications of Puerto Rico LLC ("LCPR"), Liberty

operates the largest cable company in Puerto Rico. In 2016, Liberty expanded its Puerto Rico operations by acquiring Cable & Wireless Communications Plc, which controlled Columbus International Inc., a leading provider of fiber-based connectivity and telecommunications services on the island. Today, Liberty operates a network that includes more than 3,000 route miles of fiber-optic facilities in Puerto Rico. Liberty uses this network to provide fiber-based connectivity and telecommunications services to enterprise customers located throughout the island.

AT&T—a Delaware corporation headquartered in Dallas, Texas—is a leading provider of telecommunications, media, and technology services globally. AT&T generates approximately $180 billion in annual revenues. Beyond its well-known mobile wireless and residential telecommunications businesses, AT&T is also one of the largest providers of telecommunications services to enterprise customers in the United States. AT&T entered the Puerto Rico market in 2009 through its acquisition of the wireless and wireline operations of Centennial Communications Corp. Today, AT&T provides fiber-based connectivity and telecommunications services to enterprise customers across Puerto Rico over a network that includes over 3,500 route miles of fiber-optic facilities.

On October 9, 2019, Liberty announced that it had agreed to purchase AT&T's wireless and wireline telecommunications operations in Puerto Rico and the U.S. Virgin Islands for $1.95 billion in cash. Upon closing of the transaction, Liberty would take ownership of certain AT&T assets in Puerto Rico, including its wireless and wireline networks, wireless spectrum, contracts, real estate, and most of AT&T's customer relationships on the island.[2]

B. Anticompetitive Effects of the Proposed Transaction

1. Relevant Markets

[2] The transaction does not include AT&T's DIRECTV assets in Puerto Rico, any submarine cables and landing stations, certain "global" customer contracts, or spectrum in the 3650-3700 MHz and 39 GHz ranges.

As alleged in the complaint, the provision of fiber-based connectivity and telecommunications services to enterprise customers is a relevant product market under Section 7 of the Clayton Act. Wireline telecommunications services provided over fiber-optic networks generally provide a higher level of quality and reliability than other types of wireline telecommunications services, such as those provided over legacy copper telephone network facilities or coaxial cable facilities. Enterprise customers—including business of all sizes and other institutions, such as universities, hospitals, and government agencies—generally require higher-quality and more-reliable telecommunications services than the residential telecommunications services that are purchased by consumers. For example, many enterprise customers require very high levels of dedicated bandwidth to allow them to transmit large volumes of data among their offices, and many require services that offer penalty-backed service quality guarantees in order to ensure business continuity. Fiber-based services often carry these features. Accordingly, many enterprise customers depend on fiber-based services to enable their day-to-day operations.

Enterprise customers that purchase fiber-based connectivity and telecommunications services would not turn to other connectivity technologies (such as copper or coaxial cable) in sufficient numbers to make a small but significant increase in price of fiber-based connectivity and telecommunications services unprofitable for a hypothetical monopolist provider of these services. Thus, as alleged in the Complaint, the provision of fiber-based connectivity and telecommunications services to enterprise customers constitutes a relevant product market and line of commerce under Section 7 of the Clayton Act, 15 U.S.C. § 18.

The Complaint alleges that the relevant geographic market under Section 7 of the Clayton Act is no larger than the island of Puerto Rico. The relevant geographic market is best defined by the locations of the customers who purchase fiber-based connectivity

and telecommunications services. Enterprise customers located in Puerto Rico purchase fiber-based connectivity and telecommunications services from providers that can provide service to their locations. Enterprise customers located in Puerto Rico are unlikely to move their offices or other buildings in order to purchase fiber-based connectivity and telecommunications services from firms that do not offer service to their locations. For these reasons, a hypothetical monopolist of fiber-based connectivity and telecommunications services for enterprise customers in Puerto Rico likely would increase its prices in that market by at least a small but significant and non-transitory amount. Therefore, Puerto Rico is a relevant geographic market and "section of the country" within the meaning of Section 7 of the Clayton Act, 15 U.S.C. § 18.

2. Competitive Effects

Liberty and AT&T possess two of the three most extensive fiber-based networks in Puerto Rico. Each owns thousands of last-mile fiber connections, fiber facilities in municipalities across the island, and a fiber-optic "ring" that connects the municipalities to one another. The only other provider with a comparable fiber-based network is the incumbent local telephone company on the island, Puerto Rico Telephone Company, Inc., which does business as "Claro."

Together, Liberty, AT&T, and Claro account for the vast majority of sales of fiber-based connectivity and telecommunications services to enterprise customers in Puerto Rico. While other providers offer service in Puerto Rico, they collectively account for a small fraction of sales. These smaller providers generally do not own networks of sufficient scale to enable them to compete effectively in many parts of the island. In light of the large share of enterprise customers served by Liberty, AT&T, and

Claro, this market is highly concentrated as that term is defined by the U.S. Department of Justice and Federal Trade Commission's Horizontal Merger Guidelines.[3]

As alleged in the Complaint, Liberty and AT&T compete directly with one another in this highly concentrated market. For many buildings on the island, Liberty and AT&T are either the only two providers, or two of only three providers, that own a last-mile fiber connection to the building. For many other buildings, Liberty and AT&T are the only two providers, or two of only three providers, with fiber located close enough to the building to be able to construct such a connection economically. Some enterprise customers purchase service for individual locations. Many customers, however, have multiple locations spread throughout Puerto Rico and demand service from a single provider that can serve all of their locations over its network. Given the breadth of their networks, Liberty and AT&T compete particularly closely for these customers.[4]

Competition between Liberty and AT&T for enterprise customers takes several forms. In some instances, Liberty or AT&T offers promotional rates or discounts in order to attract customers away from the other. In other instances, customers can extract concessions from Liberty or AT&T by threatening to switch to the other. Liberty or AT&T may also construct new fiber facilities in order to attract customers away from the other. Enterprise customers throughout Puerto Rico have experienced the benefit of this competition in the form of lower prices and higher-quality services.

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[3] *See* U.S. Department of Justice and Federal Trade Commission, Horizontal Merger Guidelines, at 19 (issued Aug. 19, 2020) (defining "highly concentrated markets" as those in which the Herfindahl-Hirschman Index exceeds 2500), *available at* https://www.justice.gov/sites/default/files/atr/legacy/2010/08/19/hmg-2010.pdf.

[4] A provider that does not own a last-mile connection to a particular customer location can serve enterprise customers at that location by purchasing a last-mile connection from a wholesale provider. However, providers that do not own island-wide networks, including a significant number of last-mile connections, are limited in their competitiveness because they are reliant on their wholesale providers for fiber-based connectivity and constrained by the terms set by those providers.

According to the Complaint, without the proposed remedy, the acquisition of AT&T's wireline telecommunications operations in Puerto Rico by Liberty would represent a loss of this competition. The highly concentrated market for the provision of fiber-based connectivity and telecommunications services to enterprise customers in Puerto Rico would become even more concentrated, leading to a presumption under the Horizontal Merger Guidelines that the proposed transaction would likely enhance market power.[5] The loss of Liberty and AT&T as independent competitors would leave many customers with only one alternative provider and others with no competitive choice at all. This change would likely result in increased prices and lower-quality services for enterprise customers across the island.

The entry of new competitors in the relevant market is unlikely to prevent or remedy the proposed transaction's anticompetitive effects. Barriers to entry include (i) the substantial amount of time and expense required to construct a fiber-optic network, (ii) the need for a firm seeking to construct such a network to obtain the permits and approvals required to do so, (iii) the significant level of expertise required to successfully offer telecommunications services to enterprise customers, and (iv) the need for a provider to establish a brand and reputation that would allow enterprise customers to entrust the provider with supporting their day-to-day operations. In addition, the proposed transaction would be unlikely to generate verifiable, merger-specific efficiencies sufficient to reverse or outweigh the anticompetitive effects that are likely to occur.

III. EXPLANATION OF THE PROPOSED FINAL JUDGMENT

The relief required by the proposed Final Judgment will remedy the loss of competition alleged in the Complaint by establishing an independent and economically

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[5] *See* Horizontal Merger Guidelines at 19 (explaining that "[m]ergers resulting in highly concentrated markets that involve an increase in the HHI of more than 200 points will be presumed to be likely to enhance market power").

viable competitor in the market for the provision of fiber-based connectivity and telecommunications services to enterprise customers in Puerto Rico. Paragraph IV.A of the proposed Final Judgment requires Liberty, within 30 calendar days after the entry of the Asset Preservation Stipulation and Order by the Court, to divest the Divestiture Assets, subject to extension if regulatory approval from another government entity is required.[6] The assets must be divested in such a way as to satisfy the United States in its sole discretion that they can and will be operated by the purchaser as a viable, ongoing business that can compete effectively in the market for the provision of fiber-based connectivity and telecommunications services to enterprise customers in Puerto Rico. Defendants must take all reasonable steps necessary to accomplish the divestiture quickly and must cooperate with the acquirer.

Liberty has reached an agreement to divest the Divestiture Assets to WorldNet Telecommunications, Inc. ("WorldNet"). The terms of the proposed Final Judgment govern the divestiture to WorldNet and also would govern in the event that Defendants were to divest the Divestiture Assets to a different acquirer approved by the United States.

A. Divestiture Assets

The Divestiture Assets include the Columbus Divestiture Assets, the LCPR Divestiture Assets, and the LCPR IRU.

The Columbus Divestiture Assets include the fiber-optic Columbus network in the San Juan metropolitan area. Liberty acquired this network as part of its 2016 acquisition of Cable & Wireless Communications and currently uses it to serve enterprise customers. The Columbus Divestiture Assets include the accounts of enterprise customers that Liberty serves over this network, subject to limited exceptions.

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[6] *See* Proposed Final Judgment ¶ 4.B. In this instance, the United States expects that Defendants will be required to seek approval from the Federal Communications Commission, which will likely affect the timing of the divestiture.

The LCPR Divestiture Assets include certain components of Liberty's LCPR network, which is distinct from the Columbus network. Liberty uses the LCPR network both to provide fiber-based services to enterprise customers and to serve Liberty's other customers in Puerto Rico, such as residential cable customers, which Liberty will continue serving after closing of the divestiture. The LCPR Divestiture Assets include the accounts of enterprise customers to which Liberty provides fiber-based services over the LCPR network, subject to limited exceptions, as well as Liberty's network facilities that are used to serve those customers exclusively. The LCPR Divestiture Assets do not include shared network facilities that are used by Liberty both to serve the customers being transferred and to serve Liberty's other customers on the island. These shared network facilities are covered by the LCPR IRU.

The LCPR IRU provides the acquirer with an indefeasible right to use these shared assets to provide fiber-based connectivity and telecommunications services for a fixed term of years. Paragraph IV.E of the proposed Final Judgment specifies, among other things, that the LCPR IRU must include all rights and interests necessary to enable the acquirer to provide such services; must provide the acquirer with repair, maintenance, and installation capabilities of the same quality and speed that LCPR utilizes for its own network; and must not require Acquirer to pay a monthly or other recurring fee to preserve or make use of its rights.

B. Acquirer Options

The proposed Final Judgment also requires Liberty to provide the acquirer with several options that would allow the acquirer to broaden the reach of its fiber-optic network. Paragraph IV.J requires Liberty to provide the acquirer with the option to acquire AT&T's aerial fiber-optic core network on a segment-by-segment basis within three years after the closing of the divestiture. Paragraph IV.K requires Liberty to maintain the full economic viability, marketability, and competitiveness of these

segments until Liberty makes them available for the acquirer to purchase. Paragraph IV.L requires Liberty to provide the acquirer with the option to attach fiber-optic facilities to Liberty's telephone poles at any time during the term of the Final Judgment on commercially reasonable terms comparable to those found in Liberty's other pole attachment agreements. Paragraph IV.M requires Liberty to provide the acquirer with the option to acquire space in Liberty's underground conduit and deploy fiber optic facilities therein at any time within three years of the closing of the divestiture. The acquirer may choose to use these options to expand the fiber-optic network that it acquires as part of the Divestiture Assets and reduce its reliance on the LCPR IRU over time.

C. Other Obligations

In order to preserve competition and facilitate the success of the acquirer, the proposed Final Judgment contains additional obligations for the Defendants.

Paragraph IV.N requires Liberty to facilitate the acquirer's efforts to hire certain employees. Specifically, this paragraph requires Liberty to provide the acquirer with organization charts and information relating to certain employees and to make them available for interviews. It also provides that Liberty must not interfere with any negotiations by the acquirer to hire these employees. In addition, for employees who elect employment with the Acquirer, Liberty must waive all non-compete and non-disclosure agreements, vest all unvested pension and other equity rights, provide any pay pro-rata, provide all compensation and benefits that those employees have fully or partially accrued, and provide all benefits that those employees otherwise would have been provided had those employees continued employment with Liberty, including but not limited to any retention bonuses or payments. In addition, the Defendants may not solicit to hire any employees who elect employment with the acquirer, unless that individual is terminated or laid off by the acquirer or the acquirer agrees in writing that

the Defendants may solicit or hire that individual. The non-solicitation period runs for six months from the date of the divestiture.

Paragraph IV.P facilitates the transfer to the acquirer of customers and other contractual relationships that are included within the Divestiture Assets. Liberty must transfer all contracts, agreements, and relationships to the Acquirer and must make best efforts to assign, subcontract, or otherwise transfer contracts or agreements that require the consent of another party before assignment, subcontracting, or other transfer.

Paragraph IV.R of the proposed Final Judgment requires Liberty, at the acquirer's option, to enter into a transition services agreement for back office, billing, provisioning, human resources, accounting, employee health and safety, and information technology services and support for the Divestiture Assets for a period of up to 18 months. The paragraph further provides that the United States, in its sole discretion, may approve one or more extensions of this transition services agreement for a total of up to an additional six months.

Paragraph IV.S prohibits Liberty from initiating customer-specific communications to solicit any customer transferred to the acquirer in connection with the divestiture for a period of one year following the divestiture. Liberty may respond to inquiries initiated by such customers and enter into negotiations at the request of such customers, but it must maintain a log of any such inquiries and requests. Liberty must also ensure that its construction contractors do not initiate any communications with such customers, except in specified circumstances. This paragraph does not prevent Liberty from initiating customer-specific communications with any AT&T customer with respect to those services provided by AT&T to such customer as of the closing of Liberty's acquisition of AT&T's operations. This paragraph will help the acquirer establish and maintain important customer relationships.

Paragraph XI.A requires Liberty to implement a firewall to prevent the acquirer's information from being used by other parts of Liberty's business. Specifically, Liberty must implement and maintain reasonable procedures to prevent competitively sensitive information from being disclosed, by or through implementation and execution of the obligations in the Final Judgment or any associated agreements, between Liberty's employees involved in Liberty's relationship with Acquirer and any other employee of Liberty. Under Paragraph XI.B, Liberty must, within 30 days of the entry of the Asset Preservation Stipulation and Order, submit a document setting forth in detail the procedures implemented to effect compliance with Section XI. The United States will determine, in its sole discretion, whether to approve or reject Liberty's proposed compliance plan.

D. Monitoring Trustee

The proposed Final Judgment provides that the United States may appoint a monitoring trustee with the power and authority to investigate and report on Liberty's compliance with the terms of the proposed Final Judgment and the Asset Preservation Stipulation and Order during the pendency of the divestiture, including the terms governing the sale of the Divestiture Assets and the options described above. The monitoring trustee will not have any responsibility or obligation for the operation of Liberty's business. The monitoring trustee will serve at Liberty's expense, on such terms and conditions as the United States approves, and Liberty must assist the monitoring trustee in fulfilling its obligations. The monitoring trustee will provide periodic reports to the United States and will serve until the expiration of the Final Judgment, unless the United States, in its sole discretion, determines a shorter period is appropriate.

E. Divestiture Trustee

If Liberty does not accomplish the divestiture within the period prescribed in Paragraph IV.A of the proposed Final Judgment, Section V of the proposed Final

Judgment provides that the Court will appoint a divestiture trustee selected by the United States to effect the divestiture. If a divestiture trustee is appointed, the proposed Final Judgment provides that Liberty will pay all costs and expenses of the trustee. The divestiture trustee's commission will be structured so as to provide an incentive for the trustee based on the price obtained and the speed with which the divestiture is accomplished. After the divestiture trustee's appointment becomes effective, the trustee will provide monthly reports to the United States setting forth his or her efforts to accomplish the divestiture. If the divestiture has not been accomplished within six months of the divestiture trustee's appointment, the divestiture trustee and the United States may make recommendations to the Court, which will enter such orders as appropriate, in order to carry out the purpose of the Final Judgment, including by extending the trust or the term of the divestiture trustee's appointment.

F. Enforcement Provisions

The proposed Final Judgment also contains provisions designed to promote compliance and make enforcement of the Final Judgment as effective as possible. Paragraph XV.A provides that the United States retains and reserves all rights to enforce the Final Judgment, including the right to seek an order of contempt from the Court. Under the terms of this paragraph, Defendants have agreed that in any civil contempt action, any motion to show cause, or any similar action brought by the United States regarding an alleged violation of the Final Judgment, the United States may establish the violation and the appropriateness of any remedy by a preponderance of the evidence and that Defendants have waived any argument that a different standard of proof should apply. This provision aligns the standard for compliance with the Final Judgment with the standard of proof that applies to the underlying offense that the Final Judgment addresses.

Paragraph XV.B provides additional clarification regarding the interpretation of the provisions of the proposed Final Judgment. The proposed Final Judgment is intended to restore competition that the United States alleges would otherwise be harmed by the transaction. Defendants agree that they will abide by the proposed Final Judgment, and that they may be held in contempt of this Court for failing to comply with any provision of the proposed Final Judgment that is stated specifically and in reasonable detail, as interpreted in light of this procompetitive purpose.

Paragraph XV.C of the proposed Final Judgment provides that if the Court finds in an enforcement proceeding that a Defendant has violated the Final Judgment, the United States may apply to the Court for a one-time extension of the Final Judgment, together with such other relief as may be appropriate. In addition, to compensate American taxpayers for any costs associated with investigating and enforcing violations of the Final Judgment, Paragraph XV.C provides that in any successful effort by the United States to enforce the Final Judgment against a Defendant, whether litigated or resolved before litigation, that Defendants will reimburse the United States for attorneys' fees, experts' fees, and other costs incurred in connection with any effort to enforce the Final Judgment, including the investigation of the potential violation.

Paragraph XV.D states that the United States may file an action against a Defendant for violating the Final Judgment for up to four years after the Final Judgment has expired or been terminated. This provision is meant to address circumstances such as when evidence that a violation of the Final Judgment occurred during the term of the Final Judgment is not discovered until after the Final Judgment has expired or been terminated or when there is not sufficient time for the United States to complete an investigation of an alleged violation until after the Final Judgment has expired or been terminated. This provision, therefore, makes clear that, for four years after the Final

Judgment has expired or been terminated, the United States may still challenge a violation that occurred during the term of the Final Judgment.

Finally, Section XVI of the proposed Final Judgment provides that the Final Judgment will expire ten years from the date of its entry, except that after five years from the date of its entry, the Final Judgment may be terminated upon notice by the United States to the Court and Defendants that the divestiture has been completed and that continuation of the Final Judgment is no longer necessary or in the public interest.

IV. REMEDIES AVAILABLE TO POTENTIAL PRIVATE LITIGANTS

Section 4 of the Clayton Act, 15 U.S.C. § 15, provides that any person who has been injured as a result of conduct prohibited by the antitrust laws may bring suit in federal court to recover three times the damages the person has suffered, as well as costs and reasonable attorneys' fees. Entry of the proposed Final Judgment neither impairs nor assists the bringing of any private antitrust damage action. Under the provisions of Section 5(a) of the Clayton Act, 15 U.S.C. § 16(a), the proposed Final Judgment has no prima facie effect in any subsequent private lawsuit that may be brought against Defendants.

V. PROCEDURES AVAILABLE FOR MODIFICATION OF THE PROPOSED FINAL JUDGMENT

The United States and Defendants have stipulated that the proposed Final Judgment may be entered by the Court after compliance with the provisions of the APPA, provided that the United States has not withdrawn its consent. The APPA conditions entry upon the Court's determination that the proposed Final Judgment is in the public interest.

The APPA provides a period of at least 60 days preceding the effective date of the proposed Final Judgment within which any person may submit to the United States written comments regarding the proposed Final Judgment. Any person who wishes to

comment should do so within 60 days of the date of publication of this Competitive Impact Statement in the Federal Register, or the last date of publication in a newspaper of the summary of this Competitive Impact Statement, whichever is later. All comments received during this period will be considered by the U.S. Department of Justice, which remains free to withdraw its consent to the proposed Final Judgment at any time before the Court's entry of the Final Judgment. The comments and the response of the United States will be filed with the Court. In addition, comments will be posted on the U.S. Department of Justice, Antitrust Division's internet website and, under certain circumstances, published in the Federal Register.

Written comments should be submitted to:

Scott Scheele
Chief, Telecommunications and Broadband Section
Antitrust Division
U.S. Department of Justice
450 Fifth Street, NW, Suite 7000
Washington, DC 20530
ATR.TEL-Information@usdoj.gov

The proposed Final Judgment provides that the Court retains jurisdiction over this action, and the parties may apply to the Court for any order necessary or appropriate for the modification, interpretation, or enforcement of the Final Judgment.

VI. ALTERNATIVES TO THE PROPOSED FINAL JUDGMENT

As an alternative to the proposed Final Judgment, the United States considered a full trial on the merits against Defendants. The United States could have continued the litigation and sought preliminary and permanent injunctions against Liberty's acquisition of AT&T's wireless and wireline assets in Puerto Rico and the U.S. Virgin Islands. The United States is satisfied, however, that the divestiture of assets described in the proposed Final Judgment will remedy the anticompetitive effects alleged in the Complaint, preserving competition for the provision of fiber-based connectivity and telecommunications services to enterprise customers in Puerto Rico. Thus, the proposed

Final Judgment achieves all or substantially all of the relief the United States would have obtained through litigation, but avoids the time, expense, and uncertainty of a full trial on the merits of the Complaint.

VII. STANDARD OF REVIEW UNDER THE APPA FOR THE PROPOSED FINAL JUDGMENT

The Clayton Act, as amended by the APPA, requires that proposed consent judgments in antitrust cases brought by the United States be subject to a 60-day comment period, after which the Court shall determine whether entry of the proposed Final Judgment "is in the public interest." 15 U.S.C. § 16(e)(1). In making that determination, the Court, in accordance with the statute as amended in 2004, is required to consider:

> (A) the competitive impact of such judgment, including termination of alleged violations, provisions for enforcement and modification, duration of relief sought, anticipated effects of alternative remedies actually considered, whether its terms are ambiguous, and any other competitive considerations bearing upon the adequacy of such judgment that the court deems necessary to a determination of whether the consent judgment is in the public interest; and
>
> (B) the impact of entry of such judgment upon competition in the relevant market or markets, upon the public generally and individuals alleging specific injury from the violations set forth in the complaint including consideration of the public benefit, if any, to be derived from a determination of the issues at trial.

15 U.S.C. § 16(e)(1)(A) & (B). In considering these statutory factors, the Court's inquiry is necessarily a limited one as the government is entitled to "broad discretion to settle with the defendant within the reaches of the public interest." *United States v. Microsoft Corp.*, 56 F.3d 1448, 1461 (D.C. Cir. 1995); *United States v. U.S. Airways Grp., Inc.*, 38 F. Supp. 3d 69, 75 (D.D.C. 2014) (explaining that the "court's inquiry is limited" in Tunney Act settlements); *United States v. InBev N.V./S.A.*, No. 08-1965 (JR), 2009 U.S. Dist. LEXIS 84787, at *3 (D.D.C. Aug. 11, 2009) (noting that a court's review of a consent judgment is limited and only inquires "into whether the government's determination that the proposed remedies will cure the antitrust violations alleged in the

complaint was reasonable, and whether the mechanism to enforce the final judgment are clear and manageable").

As the U.S. Court of Appeals for the District of Columbia Circuit has held, under the APPA a court considers, among other things, the relationship between the remedy secured and the specific allegations in the government's complaint, whether the proposed Final Judgment is sufficiently clear, whether its enforcement mechanisms are sufficient, and whether it may positively harm third parties. *See Microsoft*, 56 F.3d at 1458–62. With respect to the adequacy of the relief secured by the proposed Final Judgment, a court may not "make de novo determination of facts and issues." *United States v. W. Elec. Co.*, 993 F.2d 1572, 1577 (D.C. Cir. 1993) (quotation marks omitted); *see also Microsoft*, 56 F.3d at 1460–62; *United States v. Alcoa, Inc.*, 152 F. Supp. 2d 37, 40 (D.D.C. 2001); *United States v. Enova Corp.*, 107 F. Supp. 2d 10, 16 (D.D.C. 2000); *InBev*, 2009 U.S. Dist. LEXIS 84787, at *3. Instead, "[t]he balancing of competing social and political interests affected by a proposed antitrust consent decree must be left, in the first instance, to the discretion of the Attorney General." *W. Elec. Co.*, 993 F.2d at 1577 (quotation marks omitted). "The court should bear in mind the *flexibility* of the public interest inquiry: the court's function is not to determine whether the resulting array of rights and liabilities is one that will *best* serve society, but only to confirm that the resulting settlement is within the *reaches* of the public interest." *Microsoft*, 56 F.3d at 1460 (quotation marks omitted); *see also United States v. Deutsche Telekom AG*, No. 19-2232 (TJK), 2020 WL 1873555, at *7 (D.D.C. Apr. 14, 2020). More demanding requirements would "have enormous practical consequences for the government's ability to negotiate future settlements," contrary to congressional intent. *Id.* at 1456. "The Tunney Act was not intended to create a disincentive to the use of the consent decree." *Id.*

The United States' predictions about the efficacy of the remedy are to be afforded deference by the Court. *See, e.g.*, *Microsoft*, 56 F.3d at 1461 (recognizing courts should give "due respect to the Justice Department's . . . view of the nature of its case"); *United States v. Iron Mountain, Inc.*, 217 F. Supp. 3d 146, 152–53 (D.D.C. 2016) ("In evaluating objections to settlement agreements under the Tunney Act, a court must be mindful that [t]he government need not prove that the settlements will perfectly remedy the alleged antitrust harms[;] it need only provide a factual basis for concluding that the settlements are reasonably adequate remedies for the alleged harms.") (internal citations omitted); *United States v. Republic Servs., Inc.*, 723 F. Supp. 2d 157, 160 (D.D.C. 2010) (noting "the deferential review to which the government's proposed remedy is accorded"); *United States v. Archer-Daniels-Midland Co.*, 272 F. Supp. 2d 1, 6 (D.D.C. 2003) ("A district court must accord due respect to the government's prediction as to the effect of proposed remedies, its perception of the market structure, and its view of the nature of the case"). The ultimate question is whether "the remedies [obtained by the Final Judgment are] so inconsonant with the allegations charged as to fall outside of the 'reaches of the public interest.'" *Microsoft*, 56 F.3d at 1461 (*quoting W. Elec. Co*., 900 F.2d at 309).

Moreover, the Court's role under the APPA is limited to reviewing the remedy in relationship to the violations that the United States has alleged in its complaint, and does not authorize the Court to "construct [its] own hypothetical case and then evaluate the decree against that case." *Microsoft*, 56 F.3d at 1459; *see also U.S. Airways*, 38 F. Supp. 3d at 75 (noting that the court must simply determine whether there is a factual foundation for the government's decisions such that its conclusions regarding the proposed settlements are reasonable); *InBev*, 2009 U.S. Dist. LEXIS 84787, at *20 ("[T]he 'public interest' is not to be measured by comparing the violations alleged in the complaint against those the court believes could have, or even should have, been alleged"). Because the "court's authority to review the decree depends entirely on the

government's exercising its prosecutorial discretion by bringing a case in the first place," it follows that "the court is only authorized to review the decree itself," and not to "effectively redraft the complaint" to inquire into other matters that the United States did not pursue. *Microsoft*, 56 F.3d at 1459–60.

In its 2004 amendments to the APPA, Congress made clear its intent to preserve the practical benefits of using consent judgments proposed by the United States in antitrust enforcement, Pub. L. 108-237 § 221, and added the unambiguous instruction that "[n]othing in this section shall be construed to require the court to conduct an evidentiary hearing or to require the court to permit anyone to intervene." 15 U.S.C. § 16(e)(2); *see also U.S. Airways*, 38 F. Supp. 3d at 76 (indicating that a court is not required to hold an evidentiary hearing or to permit intervenors as part of its review under the Tunney Act). This language explicitly wrote into the statute what Congress intended when it first enacted the Tunney Act in 1974. As Senator Tunney explained: "[t]he court is nowhere compelled to go to trial or to engage in extended proceedings which might have the effect of vitiating the benefits of prompt and less costly settlement through the consent decree process." 119 Cong. Rec. 24,598 (1973) (statement of Sen. Tunney). "A court can make its public interest determination based on the competitive impact statement and response to public comments alone." *U.S. Airways*, 38 F. Supp. 3d at 76 (citing *Enova Corp.*, 107 F. Supp. 2d at 17).

VIII. DETERMINATIVE DOCUMENTS

There are no determinative materials or documents within the meaning of the APPA that were considered by the United States in formulating the proposed Final Judgment.

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Respectfully submitted,

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